defence; alternatively, in a sudden fight; or in the further alternative, as a consequence of being subjected to grave and sudden provocation by the deceased.

The trial judges, after carefully examining the exculpatory parts of the appellant's statements against all the other available evidence, and having done so, rejected them. They came to the conclusion that the accused had committed a premeditated assault upon the deceased, intending to kill her, and that he had brought onto the premises of the association, an iron rod or bar with which to achieve his purpose, which he threw into the Whampoa River after having achieved it. The trial judges found that there was evidence before them that, in the days immediately before the murder, the deceased had been wary of the appellant, not wishing to be left alone when he was in the vicinity. There was also produced in evidence a note written by the deceased a few days before she died which indicated that an incident had occurred involving the appellant which had distressed the deceased. In a written statement made to the police on the day of his arrest, the appellant spoke of rumours circulating in the association to the effect that he was lecherous, an allegation which he denied. The trial judges concluded that the appellant regarded the deceased to be the source of these rumours. They were satisfied beyond reasonable doubt that the appellant was guilty of the murder of the deceased and they accordingly convicted the appellant.

At the hearing before us, counsel for the appellant raised several arguments most of which he abandoned during the course of his arguments. Counsel submitted that the trial judges erred by importing their finding during the trial within a trial that the appellant was a mendacious witness as the reason for rejecting the exculpatory parts of the appellant's statements and had also erred in taking into consideration the appellant's demeanour during the trial within a trial to assess his credibility and had thereby dismissed the defences based on the exculpatory parts of his statements.

It is to be observed that the appellant when called upon to enter on his defence elected to remain silent and the defence called no evidence. In those circumstances and having regard to those parts of the appellant's statements relied on as exculpatory the trial judges rejected the submissions advanced by the appellant's counsel that it was open to the trial court to find that the appellant had established on a balance of probability the defences of grave and sudden provocation, of self-defence, or that the death was caused without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acted in a cruel and unusual manner.

In our judgment the trial judges were entitled on all the evidence before the court to reject the defences which were based solely on the statements made by the appellant to Inspector Samadi. For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Loh Lin Kok.*

Reported by *Kevin Mathews*

Lee Hung Khoon v Yeo Tang Mui

HIGH COURT (SINGAPORE) — MOTION IN SUIT NO 1202 OF 1989
THEAN J
5 MAY 1990

Civil Procedure — Interim injunction — Inter partes stage — Where the balance of convenience lies — Failure to make full and frank disclosure at ex parte stage — Effect of failure — Whether injunction should be allowed to continue — Control of Rent Act (Cap 58, 1985 Ed), ss 2 & 16

The plaintiff applied for a continuation of an interim injunction granted to him whereby the defendant was restrained from locking or obstructing the entrances to certain premises, or from infringing or interfering with the plaintiff's tenancy rights in the premises. It was argued that the plaintiff was not entitled to the statutory protection since the premises in question were not domestic premises within the meaning of the Control of Rent Act (Cap 58, 1985 Ed). It was also argued for the defendant that the plaintiff had failed to make full and frank disclosure of material facts at the time of the ex parte hearing. The issue then was whether the injunction ought to be allowed to continue in view of the non-disclosure of material facts.

Held, allowing the plaintiff's application:

(1) The issue as to whether the premises were domestic premises within the meaning of the Control of Rent Act is a matter to be decided at trial. Also, the question of whether the plaintiff was in occupation of any part of the premises is a serious issue to be tried.

(2) The court has no doubt that in this case the balance of convenience is in favour of a grant or continuation of the interim injunction. If the injunction is granted, the status quo is preserved until trial; on the other hand, if it were refused, the plaintiff would be locked out and excluded from occupation of that part of the premises to which he claims and irreparable damage would be sustained by him.

(3) The court has a discretion in this case to continue the interim injunction, notwithstanding the non-disclosure of the material facts by the plaintiff at the ex parte application.

(4) The defendant had resorted to extra-legal methods to gain possession of the premises and oust the plaintiff therefrom, and if the injunction is not continued the defendant would be enabled to perpetuate her wrongful act; furthermore, if the plaintiff at the trial succeeds in establishing his claim, it may be difficult at that stage to grant him the appropriate relief sought.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 135 of 1989.]

Case referred to

1 *Mohamed Said bin Ali & Ors* v *Ka Wah Bank* [1989] 3 MLJ 200 (folld)

Legislation referred to

Control of Rent Act (Cap 58, 1985 Ed) ss 2, 16

Lee Mun Hooi for the plaintiff.
M Amaladass for the defendant.

Cur Adv Vult

Thean J: By this notice of motion, the plaintiff applied for the continuation of the interim injunction granted to him on 26 June 1989, whereby the defendant was restrained, whether by herself or her agents or servants or otherwise and howsoever, from locking or obstructing the entrances to the premises known as 133 Rangoon Road, Singapore 0821 ('the premises') or in any way from conducting herself in a manner that infringes, interferes or otherwise is inconsistent with the plaintiff's rights and interest in the premises as a tenant thereof. The motion came for hearing before me, and at the conclusion I allowed it.

The relevant facts that gave rise to the application are briefly these. The plaintiff, Lee Hung Khoon, is the son of the late Lee Ah Yong, who passed away on 6 July 1987. Lee Ah Yong during his lifetime was the tenant of the premises, 133 Rangoon Road, Singapore 0821; he rented the premises from the trustees of Thian Yew Tong Temple, who at that time were the owners. The premises are premises within the meaning of the Control of Rent Act (Cap 58, 1985 Ed) ('the Act'). In August 1972, Lee Ah Yong sublet a portion of the ground floor of the premises to Hua Huat Credit Pte Ltd ('Hua Huat'), retaining the remaining portion of the premises. It appears that Hua Huat subsequently, in turn, sublet a portion of the ground floor to Hima Shipping Pte Ltd and Hima Marine Transport Pte Ltd, and in respect of these sublettings legal proceedings were instituted in the subordinate courts in DC Summons No 15299 of 1985 by Lee Ah Yong against Hua Huat and its subtenants. While those proceedings were in progress, Lee Ah Yong passed away on 6 July 1987; the proceedings, so far as I am aware, are still pending — at any rate they were pending at the date of hearing of this motion. After the death of Lee Ah Yong, the plaintiff continued to pay the rent in respect of the premises to the then owners, and he claims that he continued to remain in occupation of a part of the premises. He petitioned for and was granted letters of administration to the estate of Lee Ah Yong, deceased. In April 1988 or thereabout, the plaintiff sublet a portion of the second floor of the premises to Choo Kok Jee (Pte) Ltd ('Choo Kok Jee').

On 18 May 1989, the defendant purchased the premises from the owners, the trustees of Thian Yew Tong Temple, without vacant possession and subject to existing tenancy. One Lim Chwee Seng, the representative of the defendant, said that at the time of the purchase there were two subtenants in occupation of the premises; Hua Huat occupying the ground floor and Choo Kok Jee occupying the second floor, and no other person was in occupation. Soon after the completion of the purchase, the defendant negotiated with Hua Huat and Choo Kok Jee respectively, and as a result they quitted and delivered possession of the respective portion of the premises occupied by them to the defendant. The defendant, after taking possession of these portions of the premises, locked up the entrances to the ground floor and the second floor of the premises. The plaintiff thereupon instituted this action against the defendant claiming, inter alia, an injunction.

Clearly, at the date of the purchase of the premises by the defendant, there was subsisting a tenancy of the whole of the premises. That tenancy was granted to the late Lee Ah Yong during his lifetime by the trustees of Thian Yew Tong Temple, the predecessors in title of the defendant. On the death of Lee Ah Yong, the tenancy devolved on his personal representative, namely, the plaintiff in this action. The defendant, therefore, took the premises at the material time subject to this tenancy. She knew that there were two subtenants in occupation of the premises; she knew them as subtenants and negotiated with them, and must have ascertained from them and also from her predecessors in title who the chief tenant is.

The plaintiff's claim is that he is the chief tenant of the whole of the premises; that Hua Huat and Choo Kok Jee were his subtenants, and that at all material times he was, and still is, in occupation of a portion of the second floor of the premises. The defendant does not dispute that Hua Huat and Choo Kok Jee were subtenants of the premises. Nor does she deny that the plaintiff is the chief tenant of the whole of the premises. What she disputes is the plaintiff's occupation of a part of the premises as alleged by him. She maintains that the entire premises had been sublet to the two subtenants and that at all material times the plaintiff was not, and is not, in occupation of any part of the premises and therefore is not entitled to the protection under the Control of Rent Act. This is a question of fact and is a serious issue to be tried. Pending the determination of this issue, the defendant should not lock the plaintiff out and deny him access to the portion of the premises, which he claims he occupies. The action taken by her is tantamount to taking the law into her own hands and should not be permitted in any circumstances. If at the trial the plaintiff succeeds on this issue, he would be entitled to a permanent injunction.

In arguing that the plaintiff was not entitled to the statutory protection, counsel for the defendant relied on s 16 of the Act, which provides:

> In the case of any domestic premises such an order or judgment as is referred to in section 14 may without prejudice to section 15 be made in any of the following additional cases:
>
> (a) where the premises were let to the tenant by reason of his employment in the service of the landlord, and that employment has ceased;
> (b) where the landlord was personally in occupation of the premises and let them furnished for a term during his absence from Singapore, and has returned to Singapore and requires the premises for reoccupation by himself or any member of his family; and
> (c) where neither the tenant nor any member of his family is residing in the premises or any part thereof.

It seems to me that the argument on this point is only relevant, if the premises are 'domestic premises' within the meaning of s 2 of the Act. Section 2 defines 'domestic premises' as 'a building or part of a building used wholly or chiefly as a separate dwelling'. In this case, the premises, namely, 133 Rangoon Road, Singapore, were, at the time when Hua Huat was in occupation, not used 'wholly or chiefly as a separate dwelling'. It appears therefore that the premises were at that time, at any rate, not domestic premises. Hence, if the case of the defendant is founded on s 16 of the Act, there is another issue for trial, which is whether the premises are domestic premises within the meaning of the Act.

I now turn to the next question: the balance of convenience. I have no doubt in this case that the balance of convenience is in favour of a grant or continuation of the interim injunction. If the injunction is granted, as it has been granted, the status quo is preserved until trial; on the other hand, if it were refused, the plaintiff would be locked out and excluded from occupation of that part of the premises which he claims and irreparable damage would be sustained by him. For instance, the defendant may demolish the premises for the purpose of a redevelopment or may sell or rent out the entire premises to a third party who would have no notice of the plaintiff's interest.

In my opinion, on the merits, the interim injunction ought to be continued. However, it was argued by counsel for the defendant that there was a failure on the part of the plaintiff to make full and frank disclosure of material facts before the court at the time of the ex parte hearing for the interim injunction. Various matters were alleged to have been omitted from disclosure by the plaintiff, all of which I have considered. I need to deal only with the following. First, it was said that the plaintiff did not disclose that he had never resided at the premises and in particular at the time when Lee Ah Yong died the plaintiff was not residing there. This of course is a material fact but is hotly in dispute, and at this interlocutory stage I can in no way resolve it; it can only be determined at the trial, after hearing the witnesses and considering the evidence.

Secondly, the defendant said that the plaintiff owns an apartment at Block 309, Ang Mo Kio Avenue 1, #11-1261, Singapore 2056, and that he and his family reside there. The response of the plaintiff is that that is his matrimonial home, but he said that he had been separated from his wife, and that while his wife and family live at that apartment, he himself stays at the back room on the second floor of 133, Rangoon Road. As evidence of this separation, he produced a deed of separation between him and his wife made in 1983. This is being challenged by the defendant and is again a matter which has to be resolved at the trial.

The third matter alleged against the plaintiff is that he had failed to disclose that he sublet the second floor of the premises to Choo Kok Jee. The plaintiff admitted that in April 1988 he did sublet a portion of the second floor to Choo Kok Jee; but this fact was only stated in the second affidavit of the plaintiff at the hearing of the motion. It was not disclosed at the hearing of the ex parte application for the interim injunction. This, I agree, is a fact which is material to the exercise of the court's discretion whether or not to grant the injunction.

Connected with the above omission is a misstatement in para 9 of the plaintiff's affidavit affirmed on 23 June 1989 in support of his ex parte application. In that para 9 he said, inter alia:

> On the morning of 18 June 1989, when I returned to the said premises to commence business, I noticed that new chain locks had been installed to both the side and main collapsible gates to the said premises.

The first part of the statement is incorrect. He has never made use of any part of the said premises, whether the first floor or the second floor, for any business; so there is no question of his returning to the premises that morning 'to commence business'. On his own admission in his subsequent affidavit affirmed on 29 August 1989, he said he had always been and was in occupation of 'a room at the back portion of the upper floor' and that he was residing there. He said in para 12:

> I do still live separately from my wife and my sojourn is at the back room of the upper floor of the said premises at No 133 Rangoon Road. I have used my wife's address for correspondence for reason of convenience and to ensure that all the letters would be received by me as the address at No 133 Rangoon Road had been used by the subtenants. I return to sleep at No 133 Rangoon Road only early in the morning after my work as a taxi driver.

This again is a material omission — an omission to state correctly in his affidavit in support of his ex parte application the nature of his occupation of the portion of the second floor of the premises, which was only corrected in the subsequent affidavit.

The next question is whether in view of the non-disclosure of these material facts I ought to allow the injunction to continue. On this question I find of great assistance the decision of Grimberg JC in *Mohamed Said bin Ali & Ors* v *Ka Wah Bank*,[1] which was cited by counsel for the plaintiff. In that case, there was a failure on the part of the first plaintiff to make full and frank disclosure of material facts in his affidavit that led to the granting of the ex parte injunction. Nevertheless, the learned judge, after considering several recent cases in England on the subject, came to the conclusion that he had the power in his discretion to continue the injunction, if that was the course which justice required, and in the circumstances of that case, he did exercise his power and continue the injunction in favour of the first plaintiff. It is unnecessary for me to refer to the cases which have been cited to and considered by the learned judge; suffice here to say that I have also considered them and found them helpful and instructive, and I agree with his analysis of those cases and the conclusion he reached. Accordingly, in my opinion, I have a discretion in this case to continue the interim injunction, notwithstanding the non-disclosure of the material facts by the plaintiff at the ex parte application. The defendant has resorted to extra-legal methods to gain possession of the premises and oust the plaintiff therefrom, and if the injunction is not continued the defendant would be enabled to perpetuate her wrongful act; furthermore, if the plaintiff at the trial succeeds in establishing his claim, it may be difficult at that stage to grant him the appropriate relief sought. For these reasons and also the reasons which I have earlier discussed, justice requires an order to continue the interim injunction to preserve the status quo. I accordingly made the order.

Application allowed.

Solicitors: *Lee Bon Leong & Co; M Dass & Co.*

Reported by *Azra Moiz*

Soon Hua Seng Co Ltd & Ors v Bombay Trading Co (Pte) Ltd

HIGH COURT (SINGAPORE) — SUIT NO 749 OF 1989
CHAN SEK KEONG J
16 APRIL 1990

Contract — Sale of goods — Free on board — Ship nominated by buyer unable to load all goods — Whether buyer in breach — Sellers load partial consignment — Claim for damages, full commercial invoice value and quantum valebat

By an agreement, the plaintiffs agreed to sell to the defendants a consignment of rice FOB and stowed Bangkok and Kohshichang, payment by irrevocable letter of credit payable at sight. The letter of credit was backed by a master letter of credit issued by an Iranian bank. When the plaintiffs appropriated rice to the contract, it was discovered that the vessel nominated by the defendants was not able to receive the entire consignment. The plaintiffs made a partial shipment on board the nominated ship instead. However, when the shipping documents were presented, they were not accepted by the bank on the grounds of discrepancies. The plaintiffs commenced the present action against the defendants for the price of the goods, damages for breach of contract and, alternatively quantum valebat. They then applied for summary judgment. The assistant registrar gave judgment for the plaintiffs. From this, the defendants appealed. The plaintiffs alleged, inter alia, that the defendants had waived the discrepancy.

Held, dismissing the defendants' appeal:

(1) In an FOB contract, the buyer has a duty to provide a vessel at the appointed time and place to enable the seller to bring the goods alongside for loading. The ship must be ready, willing and able to load the contracted goods.

(2) The defendants were in breach of contract in failing to nominate a vessel which could load the contracted goods.

(3) The plaintiffs could have refused to ship the entire cargo. They decided to ship what was already loaded on the ship and to regularize the discrepancy in the shipment by asking for the master letter of credit to be amended.

(4) If the defendants did not accept this shipment as due performance, they themselves would be in breach. If they accepted the partial shipment, they were liable to pay the full commercial value.

(5) The plaintiffs' claim against the defendants must succeed on either one or the other of the said causes of action. On either claim, the loss suffered by the plaintiffs is the same.

(6) As regards the second issue as to whether the defendants had waived the tender of documents out of time, it is an issue of fact which cannot be determined in these proceedings.

Belinda Ang for the plaintiffs.
S Bala for the defendants.

Cur Adv Vult

Chan Sek Keong J: By an agreement contained in a telex dated 30 November 1988 and amended by telexes dated 27 December 1988 and 28 December 1988, the plaintiffs agreed to sell and the defendants agreed to buy 15,000 metric tons 5% more or less at buyers' option Thai White